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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 302

CLAIBORNE DAMERON, PETITIONER

vs.

A. S. BRODHEAD, MANAGER OF REVENUE AND EX-OFFICIO TREASURER OF THE CITY AND COUNTY OF DENVER

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO

PETITION FOR CERTIORARI FILED AUGUST 28, 1952
CERTIORARI GRANTED NOVEMBER 24, 1952

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 302

CLAIBORNE DAMERON, PETITIONER,

vs.

ROY W. CASS, MANAGER OF REVENUE AND EX-OFFICIO TREASURER OF THE CITY AND COUNTY OF DENVER

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO

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2. The right of the City and County of Denver to tax personal property of certain army personnel and the right of such personnel to be exempt from such taxation under Federal enactment and the construction of said enactment are the principal questions submitted for the determination of this Honorable Court, and it is in the interest of the public as well as both parties that said questions be decided so soon as conveniently may be.

/s/ MAX M. BULKELEY,
Max M. Bulkeley,
United States Attorney for the District of Colorado

/s/ HENRY E. LUTZ,
Henry E. Lutz,
Assistant United States Attorney for the District of Colorado

Attorneys for Defendant in Error.

The above motion consented to and approved:

PIERPONT FULLER
ABE L. HOFFMAN
BURTON CRAGER

HEL:s

(File Endorsement Omitted)

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14 IN THE SUPREME COURT OF THE STATE OF COLORADO

Minute Entry—April 30, 1951

At this day comes the plaintiff in error by his counsel, Burton Crager, Esq. Henry E. Lutz, Esq., introduces Berryman Green, Esq., who is allowed to appear herein and argue for defendant in error. Whereupon this cause was argued by said counsel and submitted to the consideration and judgment of the Court.

By agreement, Mr. Justice Stone and Mr. Justice Moore may particiate without further oral argument.

IN THE SUPREME COURT OF THE STATE OF COLORADO

Motion for Reargument—Filed August 28, 1951

COMES Now the Defendant in Error herein by the United States Attorney for the District of Colorado, and respectfully moves the Court for a re-argument of this cause and in this behalf shows:

1. That this cause was argued to this Honorable Court on April 30, 1951 at which time only five members thereof sat.

2. That since April 30, 1951 two of those five justices so sitting have died.

3. That in consequence of said deaths, only three members of this Honorable Court, or a minority thereof, has had the benefit of oral presentation.

15 4. That the matters herein at issue are publici juris, involving the constitutionality of an Act of Congress of the United States, and hence is of vast importance both theoretically and as respects the practical application of the statute in question.

5. That this Honorable Court is the only appellate Court to which said issues have been submitted for determination.

/s/ MAX M. BULKELEY
MAX M. BULKELEY,
United States Attorney for the District of Colorado

/s/ HENRY E. LUTZ
HENRY E. LUTZ,
Assistant United States Attorney for the District of Colorado

HEL/s

(File Endorsement Omitted)

IN SUPREME COURT OF COLORADO

Order—August 30, 1951

Upon consideration of the motion of the defendant in error, and also the certificate of service of a copy thereof on the plaintiff in error, the Court being well advised in the premises doth this day order that the motion for re-argument of this cause be, and the same is hereby, denied.

16 IN SUPREME COURT OF COLORADO

No. 16613

ROY W. CASS, Manager of Revenue and Ex-Officio Treasurer of the City and County of Denver, *Plaintiff in Error*,

v.

CLAIBORNE DAMERON, *Defendant in Error*.

Error to the District Court of the City and County of Denver.
Hon. Henry S. Lindsley, Judge.

EN BANC. JUDGMENT REVERSED.

Mr. J. Glenn Donaldson,
Mr. Abe L. Hoffman,
Mr. Burton Crager,
Attorneys for Plaintiff in Error.

Mr. Theron Lamar Caudle, Assistant Attorney General,
Mr. Ellis N. Slack } Special Assistants to the Attorney General,
Mr. Berryman Green }
Mr. Max M. Bulkeley, United States Attorney,
Mr. Henry E. Lutz, Assistant United States Attorney,
Attorneys for Defendant in Error.

MR. CHIEF JUSTICE JACKSON delivered the opinion of the Court.

Opinion—Filed May 12, 1952

17. The question presented in this case is whether, under section 574 of the Federal Soldiers' and Sailors' Civil Relief Act, Title 50, U. S. C. A., the personal tangible property of an officer in the Armed Forces of the United States, whose domicile is Louisiana, is subject to taxation by the City and County of Denver where it was located during the calendar year 1948 while the officer and his family resided in Denver and he was assigned to duty at the near-by Lowry Field Air Base.

The case arose when defendant in error, Dameron, after paying, under protest, taxes in the amount of $23.51 on a valuation of $460.00 to plaintiff in error, as manager of revenue and ex-officio treasurer of the City and County of Denver, sued to recover the amount paid. The facts are not in dispute. Major Dameron and his family resided in Denver all of the calendar year 1948, during which period he was assigned to Lowry Field Air Base, and the personal tangible property upon which the tax was paid was located in their Denver apartment. This property was in the Colorado jurisdiction when it was listed, valued, assessed, when the lien attached, the levy applied and the tax became due and payable.

There is no allegation or contention that a tax was paid in the state of plaintiff's domicile, Louisiana, or any other state, on the same property during that time. The trial court entered judgment in favor of plaintiff, and the treasurer of the City and County of Denver brings the cause here for review seeking a reversal of that judgment.

18 The pertinent provisions of the Soldiers' and Sailors' Civil Relief Act read as follows:

§ 574. "(1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person *shall not be deemed* to have *lost* a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, *solely by reason of being absent* therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and *solely by reason of being so absent. For the purposes of taxation in respect of the personal property*, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is *not* a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and *personal property shall not be deemed* to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district: Provided, That nothing

19 contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of *personal property used* in or arising from a trade or business *if it otherwise has jurisdiction*. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942.

"(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) *the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, That*

the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid." Italics supplied.

In the interpretation of a statute, a primary object is to determine the intention of the legislative body. The history of an act is often appropriate, and with that purpose counsel for Dameron attach to their brief, as Appendix B, the Senate Committee Report on Military Affairs respecting the 1944 amendment to the Soldiers' and Sailors' Civil Relief Act. That report reads as follows:

"The Committee on Military Affairs, to whom was referred the bill, H. R. 4733, to amend section 514 of the Soldiers' and Sailors' Civil Relief Act, having considered the same, submit the following report thereon, with the recommendation that it do pass.

"The purpose of the proposed legislation is to clarify the intent of section 514 of the Soldiers' and Sailors' Civil Relief Act as added by section 17 of the act of October 6, 1942 (56 Stat. 769, 777). When that provision of law was added to the act to relieve persons in service from liability of *double taxation* by being moved from one State to another under orders, it was intended that it should apply to personal property taxes as well as to income taxes. As presently constituted, it primarily affects taxes in respect to income and other taxes based on residence or domicile, but it does not prevent the State of 'temporary residence' from taxing tangible personal property actually located in such State so long as the tax does not depend on residence or domicile. A few States have taken the position that tangible personal property of military personnel who are only temporarily within their jurisdiction does not acquire a situs for taxation, but it has been held that section 514 of the act as now written does not affect the right of a State to assess personal-property taxes on property within its jurisdiction. The result has been that servicemen find themselves at times subjected to personal-property taxes on *the same property in more than one State during* the same calendar year by reason of being moved under orders.

"Your committee considers that the existing law pertaining to State taxation of the personal property of persons in military service present in the various States in compliance with military orders should be clarified; that the military personnel concerned *should not be subjected to multiple taxation of personal property* by the various States and should be given the same protection as to personal property taxes

as is now provided in respect of income taxes.'" Italics supplied.

It would appear from the wording of this report that the main object of the 1944 amendment was the elimination of multiple taxation of military personnel.

Counsel for Dameron attach to their brief, as Appendix C, a list of the states of the Union, together with the state and local assessment dates for assessment of personal property, showing the varying dates upon which personal property is assessed in those states. We believe that this only emphasizes the fact that the Congress was merely intending the elimination of multiple taxation through the possibility of the same property being taxed in various states because of the owner being in several states during the course of the year.

There is nothing in the following letter from Henry L. Stimson, then Secretary of War, to the chairman of the committee of military affairs of the Senate, dated June 9, 1944, that alters this conclusion:

"The purpose of the proposed legislation is to prevent the multiple taxation of the personal property of military personnel by the various States, which it is understood was
22 one of the purposes of section 514 of the Soldiers' and Sailors' Civil Relief Act as added by the act of October 6, 1942."

We feel confirmed in our position that the principal object of the amendment to the Soldiers' and Sailors' Civil Relief Act is to prevent the possibility of multiple taxation, after noting the following comment in the report of the House Military Affairs Committee referring to this same legislation:

"When the Soldiers' and Sailors' Civil Relief Act of 1940 was amended by the act of October 6, 1942, a provision was written into the act to *relieve persons* in the service from liability of *double taxation* by being moved from one State to another under orders. It was intended that this should apply to personal property taxes as well as income taxes. However, it has been held that under the wording of such amendment personal property taxes were not included. The result has been that servicemen find themselves at times subjected to personal property taxes in more than one State by reason of being moved under orders.

"The purpose of the present act is to correct this situation and to give to the servicemen the same protection as to personal property taxes that they now have as to income taxes."

	Original	Print
Order of substitution	23	23
Order allowing certiorari	25	24

Filed August 28, 1952.

1 IN THE SUPREME COURT OF THE STATE OF COLORADO

No. 16613

ROY W. CASS, Manager of Revenue and ex-Officio Treasurer of the City and County of Denver, *Plaintiff in Error,*

v.

CLAIBORNE DAMERON, *Defendant in Error.*

Writ of Error—Filed Dec. 15, 1950

IN THE SUPREME COURT OF THE STATE OF COLORADO

THE PEOPLE OF THE STATE OF COLORADO to the Clerk of the District Court of the City and County of Denver,

GREETING:

YOU ARE HEREBY COMMANDED to certify, as provided by the rules of said Supreme Court, a correct transcript of the record in a certain cause lately pending in said Court between Claiborne Dameron, plaintiff, and Roy W. Cass, Manager of Revenue and Ex-Officio Treasurer of the City and County of Denver, Defendant, to the Supreme Court in the City of Denver within sixty days from the receipt of this writ, or within such additional time as said Supreme Court may order.

WITNESS the Honorable Benjamin C. Hilliard, Chief Justice of our Supreme Court, and the seal of said Court, in the City of Denver; this 15th day of December, A.D. 1950.

(SEAL)

O. E. RICKERSON
Clerk, Supreme Court,
By M. A. WHITE
Deputy Clerk

(File Endorsement Omitted)

2 IN THE SUPREME COURT OF THE STATE OF COLORADO

Summons to Hear Errors—Filed Dec. 21, 1950

TO THE DEFENDANT IN ERROR ABOVE NAMED, GREETING:

You are hereby notified that a writ of error has been issued out of our Supreme Court, directed to the District Court of the City and County of Denver, in a certain cause lately pending therein between Claiborne Dameron, Plaintiff, and Roy W. Cass, Manager of Revenue and Ex-Officio Treasurer of the City and County of Denver, Defendant, to review the judgment of said Court, entered in said matter.

You are therefore hereby commanded to appear in the Supreme Court within ten days after service hereof and pay the docket fee of five dollars, and in default thereof the plaintiff in error will not be required to serve you with any papers required by the rules of this Court, and the Court may proceed to a determination of said writ of error ex parte.

WITNESS the Honorable Benjamin C. Hilliard, Chief Justice of our Supreme Court, and the seal thereof, affixed at my office in the City of Denver, this 15th day of December, A.D. 1950.

(SEAL)

O. E. RICKERSON,
Clerk, Supreme Court,

By M. A. WHITE,
Deputy.

As attorney of record for the within named defendant in error, I hereby acknowledge service of the within summons to hear errors, this 19th day of December, 1950.

MAX M. BULKELEY,
U. S. Dist. Atty. Colo.,
Attorney for Defendant in Error.

(File Endorsement Omitted)

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3 IN THE SUPREME COURT OF THE STATE OF COLORADO

Abstract of Record—Filed Dec. 28, 1950

Complaint—Filed April 1, 1949

"Comes now Claiborne Dameron, by the United States Attorney for the District of Colorado, and for cause of action against the above-named defendant alleges as follows:

I

That the plaintiff, Claiborne Dameron, is, and at all times mentioned, has been a member of the Armed Forces of the United States, being a commissioned officer of the United States Air Forces.

II

The defendant, Roy W. Cass, is the duly appointed, qualified and acting Manager of Revenue of the City and County of Denver, State of Colorado, and as such is the ex-officio Treasurer and ex-officio Assessor thereof.

III

During all of the calendar year 1948, plaintiff was, and at all times subsequent thereto, has been, and at the present time, as such commissioned officer aforesaid, is assigned to, and on duty at Lowry Field, an installation of the United States Air Forces in the State of Colorado, within and adjacent to the City and County of Denver. That perforce said orders of assignment, he is
4 obliged to temporarily, and during the continuance of said orders, be and remain in the City and County of Denver, State of Colorado, his address presently, and at all times pertinent hereto, being and having been the premises numbered Apartment 1, 1523 Willow Street, said City and County of Denver.

IV

That the plaintiff, during the whole of the calendar year 1948, and for many years prior thereto, was, and at the present time is, a citizen and a resident of the State of Louisiana, domiciled in the Town of Port Allen, in the Parish of West Baton Rouge, in the State of Louisiana, and remains a domiciliary of that town, parish, and state, and a citizen and resident of said state, in which during all of the period of time pertinent hereto the plaintiff was and is a qualified voter.

V

That on the 23rd day of April, A.D. 1948, the defendant, as said Manager of Revenue and, ex-officio assessor of the City and County of Denver, made or caused to be made against the plaintiff, upon the assessment books of his said office, in Schedule AA-PP-D5, an assessment for the year 1948 in the amount of $23.51, upon personal property owned exclusively by the plaintiff, and possessed and maintained by him in the City and County of Denver at said premises numbered Apartment 1, 1523 Willow Street, Denver, Colorado.

VI

That on the first day of April, 1949, the plaintiff, upon demand of the defendant, and solely for the purpose of avoiding the imposition upon himself and his property of penalties and interest, and to avoid seizure, impounding and sale of the personal property so assessed and owned exclusively by the plaintiff, and mentioned in allegation V of this complaint, paid to the defendant as ex-officio Treasurer of said City and County of Denver, under protest, the sum of $23.51 so then and theretofore claimed by said defendant to be due and payable as taxes on the personal property assessed to the plaintiff by said defendant, according to said Schedule AA-PP-D5, above mentioned for the year 1948, a copy of said protest is attached hereto marked Exhibit 1, and is made a part hereof.

VII

The plaintiff, by reason of Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended by an Act of Congress approved by the President on July 3, 1944, is immune and exempt from State and local taxation of any character upon his personal property owned and maintained by him as aforesaid, and the collection of the taxes hereinabove described by the defendant as aforesaid is an unlawful interference with the plaintiff in the discharge of his duties to the military forces of the United States as a commissioned officer of the United States Air Forces, and is in contravention of the Act of the Congress of the United States hereinabove mentioned and contravenes Article VI, Clause 2, of the Constitution of the United States.

VIII

That the rights of exemption from personal property taxation under said Section 541, and the Constitution of the United States, as last hereinabove alleged, are common to a large number of other persons, to-wit, approximately two thousand persons in the City and County of Denver, Colorado, similarly situated and affected, and a still larger number of persons elsewhere situated in the State of Colorado. That hence this cause, and the matters herein involved, are publici juris, and their ultimate determination will fix and establish the rights of all of said persons, as well as those of the taxing authorities of the State of Colorado.

"WHEREFORE, the plaintiff prays judgment against said defendant as Manager of Revenue, and ex-officio Treasurer of the City and County of Denver, for the sum and amount of $23.51,

together with interest thereon as allowed by law, for costs, and such other relief as the facts may warrant."

Attached to the foregoing complaint was the following Exhibit "A", in words and figures as follows:

Exhibit "A" to Complaint

"HEADQUARTERS
LOWRY AIR FORCE BASE
AND
3415TH TECHNICAL TRAINING WING
DENVER, COLORADO

16 March 1949

"Mr. Roy W. Cass
Manager of Revenue and Ex-Officio Treasurer
City and County of Denver.
Denver, Colorado

Dear Sir:

There is herewith paid to you by myself, Claiborne Dameron, the sum of $23.51, in full payment of general taxes of the City and County of Denver for the year 1948, according to Schedule D 217, and on account of personal property owned exclusively by myself, as will appear in the above described assessment.

This payment is made to you under protest.

7 The conditions upon which this payment is protested are as follows:

1. That I am, and at all times during the year 1948, was a member of the Armed Forces of the United States, being a commissioned officer of the United States Air Force.

2. That I am, and at all times during the year 1948, was domiciled in the State of Louisiana, in the Town of Port Allen, in the Parish of West Baton Rouge, in the State of Louisiana, and a resident thereof.

3. That my present presence and my presence during the year 1948 in the State of Colorado was and is under, pursuant to and by virtue of military orders of the United States Air Force.

4. That under the provisions of Section 514 of the Act of Congress commonly known as the Soldiers' and Sailors' Relief Act of 1940, as amended by an Act of Congress approved July 3, 1944, the tangible personal property owned and possessed by myself in the State of Colorado during the year 1948 and at the present time is not subject to taxation by the City and County of Denver or by the State of Colorado, but to the contrary, is by the above-men-

tioned statute expressly exempted from taxation by the City and County of Denver, and State of Colorado.

"Very truly yours,

/s/ Claiborne Dameron
CLAIBORNE DAMERON
Major USAF"

8 **Answer—Filed April 15, 1949**

"Comes now Roy W. Cass, Manager of Revenue and Ex-Officio Treasurer of the City and County of Denver and for Answer and Defense alleges as follows:

FOR AN ANSWER AND FIRST DEFENSE:

1. Admits the allegations of paragraph 1 of the complaint.

2. Admits the allegations of paragraph 2 of the complaint.

3. Does not deny the allegations of paragraph 3 of the complaint but states that the premises therein mentioned, to-wit: Apartment No. 1, 1523 Willow Street, City and County of Denver, is not located upon lands reserved to the United States Government or in any wise owned or controlled by the United States Government but is privately owned premises located in and subject to the jurisdiction of the City and County of Denver and State of Colorado.

4. Does not deny the allegations of paragraph 4 of the complaint.

5. Admits the allegations of paragraph 5 of the complaint and further states that the personal property therein mentioned is entirely tangible property physically located within the City and County of Denver, as appears from the assessment schedule attached hereto as Exhibit "A" incorporated herein by reference and said tangible property was not caused or required to be brought into the City and County of Denver by reason of any Military Orders but was brought thereinto for the personal benefit and convenience of the plaintiff.

6. Does not deny the allegations of paragraph 6.

7. Denies the conclusions of law recited in paragraph 7.

8. As to paragraph 8, admits the issues raised in the complaint are common to a large number of persons who are members of the Armed Forces and who are present pursuant to Military Orders in the City and County of Denver and in the State

of Colorado, but denies that such persons are entitled to an exemption from personal property taxation on their tangible personal property physically existing within the City and County of Denver.

FOR SECOND AND FURTHER DEFENSE:

9. The complaint herein filed fails to state a claim upon which relief can be granted.

FOR THIRD AND FURTHER DEFENSE:

10. Shows unto the Court that the Constitution of the United States does not empower the Congress of the United States to enact any legislation exempting tangible personal property not owned by the United States nor any subdivision or public corporation thereof from taxation by the State of Colorado or the City and County of Denver when such property is physically present in said State or City and County.

FOR A FOURTH AND FURTHER DEFENSE:

11. Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended July 3, 1944 (Title 50, App. U.S.C.A., Sc. 574), is contrary to the Constitution of the United States and is null, void and of no effect.

FOR A FIFTH AND FURTHER DEFENSE:

12. Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended July 3, 1944 (Title 50, App. U.S.C.A., Sec. 574), does not expressly nor by implication divest the City and County of Denver or any state or municipality of the power to levy and collect a tax upon any privately owned tangible personal property physically present within the borders thereof irrespective of the domicile of the owners.

FOR A SIXTH AND FURTHER DEFENSE:

13. The purpose and intent of Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended July 3, 1944 (Title 50, App. U.S.C.A. Sec. 574), is to preclude multiple taxation upon persons necessarily away from the states of their residence or domicile by reason of Military Orders while serving in the Armed Forces of the United States and not to render them or their property immune or exempt from taxation. But the tangible personal property of the plaintiff herein involved, being physically present in the City and County of Denver, would not be subject to taxa-

tion anywhere unless taxable in and by the City and County of Denver.

WHEREFORE, this Defendant, having fully answered, prays that this action be dismissed and that this Defendant have judgment for his costs herein expended."

Attached to the foregoing Answer filed with the District Court was Exhibit "A", being a tax schedule showing the tax assessment on the personal property owned by the plaintiff and agreed to have been located at 1523 Willow Street in the City and County of Denver, State of Colorado, for the year 1948. Said schedule shows an agreed net valuation on the personal property, most of which was household goods, of $460.00.

Minute Entry

On March 15, 1950 the Trial Court, having heard the arguments of counsel, took the case under advisement and ordered the parties to submit briefs.

11

Finding and Order—March 18, 1950

"At this day come the parties hereto by their attorneys, respectively.

And this cause having been heretofore submitted to the Court, and by the Court taken under advisement upon March 15, 1950, and the Court being now sufficiently advised in the premises, doth find the issues in favor of the plaintiff, Claiborne Dameron, and against the defendant, Roy W. Cass, Manager of Revenue and ex-officio Treasurer, City and County of Denver, in the sum of $23.51 with interest and costs.

And thereupon, it is ordered by the Court that judgment enter in accordance with the findings of the Court."

Whereupon, on the same day judgment was entered as follows:

"The Court having this day ordered that judgment be entered herein in accordance with the findings of the Court in favor of the plaintiff and against the defendant, now therefore;

It is the order of the Court that the plaintiff do have and recover of and from the said defendant, Roy W. Cass, Manager of Revenue and ex-officio Treasurer, City and County of Denver, the sum of $23.51 with interest, together with his costs in this behalf laid out and expended, to be taxed."

Minute Entry

On the same date the Court ordered that the necessity for filing a Motion for a new trial was dispensed with.

12 IN THE SUPREME COURT OF THE STATE OF COLORADO

Specifications of Points—Filed Dec. 28, 1950

1. The Trial Court erred in not ruling that the complaint filed below failed to state a claim upon which relief can be granted.

2. The Trial Court erred in not entering judgment against the plaintiff and in favor of the defendant.

3. The Trial Court should have entered judgment for the defendant instead of the plaintiff for the reason that Section 514 of the Soldiers' and Sailors' Relief Act of 1940, 54 Stat. 1179, as added by Soldiers' and Sailors' Civil Relief Act Amendments of 1942, 56 Stat. 769, and amended by Act of July 3, 1944, c. 397, 58 Stat. 722, when properly construed does not purport to exempt from state or local taxation the tangible personal property of a serviceman, such as the plaintiff here, during the time that his tangible personal property is physically present within the taxing jurisdiction.

4. The Trial Court should have entered judgment for the defendant instead of the plaintiff for the reason that if the Congressional Act referred to in Point 3 be construed as intending to exempt from state or local taxation, the tangible personal property of a serviceman such as the plaintiff here, during the time that his tangible personal property is physically present within the taxaing jurisdiction, then the said Congressional Act is to that extent unconstitutional under the United States Constitution.

Respectfully submitted,

J. GLENN DONALDSON
ABE L. HOFFMAN
BURTON CRAGER
Attorneys for Plaintiff in Error
353 City and County Building
Denver, Colorado.

---

13 IN THE SUPREME COURT OF THE STATE OF COLORADO

Motion to Advance—Filed Feb. 28, 1951

COMES Now the defendant in error above-named and respectfully moves the Court that this cause be advanced on its hearing docket to the earliest date conforming the convenience of the Court and in this behalf shows:

1. The questions in this cause are publici juris.